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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 23rd May 2012

No. 4098—II/1(BH)-06/2003 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th December 2011 in Industrial Dispute Case No. 10 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s IPISTEEL Ltd., At/P.O. Gundichapada, Dist. Dhenkanal and its workman Shri Dukhabandhu Sahoo was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 OF 2005

Dated the 17th December 2011

Present :

**S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court,
Bhubaneswar.**

Between :

**The Managing Director,
M/s IPISTEEL Ltd.,
At/P.O. Gundichapada,
Dist. Dhenkanal.**

First Party—Management

And

**Shri Dukhabandhu Sahoo,
At/P.O. Jiral,
P.S. Kamakhyanagar,
Dist. Dhenkanal.**

Second Party—Workman

Appearances :

None

For First Party— Management

Shri Dukhabandhu Sahoo

Second Party— Workman himself

AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 8200—li/1 (BH)-6/2003-LE., dated the 22nd August 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Dukhabandhu Sahoo, Turner by way of dismissal with effect from the 16th July 2002 by the management of M/s IPISTEEL Ltd., Gundichapada, Dhenkanal is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?"

3. The claim of the second party workman, in brief, as set out in his statement, that he was appointed as electrical Helper in the production unit of the management factory and subsequently his service was confirmed by the management. During the course of his service, the present workman alongwith others formed a registered Union for which the management out of grudge on 5-5-1998 issued order of suspension alongwith charges directed the second party workman to submit explanation within 48 hours of receipt of the same. On 7-5-1998 he (workman) submitted his explanation and could not attend the duty due to his illness. On 4-5-1998, he submitted his joining report alongwith Medical Certificate but the management did not allow him to resume his duty. Inspite of submission of his explanation the management turned deaf ear.

4. Further the case of the workman is that he was charge sheeted for unauthorised absent from duty and without any enquiry dismissed him on 16-7-2002 without to adopting the principles of natural justice. No show cause has been communicated nor any subsistence allowance was paid to him. In view of the above averments, the workman has prayed for reinstatement in service with full back wages.

5. On the other hand the first party management appeared and in spite of several adjournments remained absent inspite of notice and ultimately on 28-10-2011 was set *ex parte*.

6. In order to substantiate his plea the workman has examined himself as W.W.1 and proved documents such as, Ext.1 is the copy of letter No. 115, Dt. 3-8-1998 of management, Ext.2 is the copy of letter No. 116, Dt. 3-8-1998 of management, Ext.3 is the copy of reply of the workman, Dt. 12-8-1998 alongwith postal receipt, Ext.4 is the copy of letter Dt. 4-7-2000 of workman to D.L.O., Dhenkanal, Ext.5 is the copy of notice, Dt. 16-7-2002 of management regarding dismissal order, and Ext.6 is the copy of letter, Dt. 12-8-2002 of workman. The workman has reiterated the stands taken in the claim statement. In view of the unchallenged testimony of the workman, and on perusal of the documents filed by the workman, the termination of services of workman by way of dismissal with effect from the 16th July 2002 is not legal as because the management without following the mandatory provisions of Industrial Disputes Act, 1947 terminated the services of the workman, he is entitled to be reinstated in service.

7. Regarding his arrear wages, it is an admitted fact that he was not working under the management after his termination. In view of the settled principle of law when the workman has not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere payment of back wages is not justified. Similarly in view of the certain principles of law the relief of reinstatement with full back wages would not be granted automatically only because it will be lawful to do so. For the said purpose, several factors are required to be taken into consideration. So in the present case on careful consideration of the materials available, I am of the opinion that instead of giving any arrear back wages a lump sum amount of Rs. 10,000 (Rupees ten thousand) only in lieu of back wages as compensation will meet the ends of justice in the facts and circumstances of this case.

8. Hence it is ordered :

That the termination of service of Shri Dukhabandhu Sahoo by way of dismissal with effect from the 16th July 2002 by the management of M/s IPISTEEL Ltd., Gundichapada, Dhenkanal is illegal and unjustified. The workman Shri Dukhabandhu Sahoo is entitled to be reinstated in service with a compensation of Rs. 10,000 (Rupees ten thousand) only towards arrear back wages. The management is directed to implement this Award within a period of two months from the date of publication in the official Gazette, failing which the amount shall carry interest at the rate of 20% per annum till its realisation.

The reference is answered accordingly in *ex parte*.

Dictated and corrected by me.

S. A. K. Z. AHAMED

17-12-2011

Presiding Officer

Labour Court

Bhubaneswar

S. A. K. Z. AHAMED

17-12-2011

Presiding Officer

Labour Court

Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government